

SUMMARY OF PROPOSED FLOOR DRAFT:

BILL 40, CD1 (2019) RELATING TO PLASTIC.

The **PROPOSED FD1** makes the following amendments:

- A.** In SECTION 2 of the bill, amends the definition of "Plastic checkout bag" in ROH Section 9-9.1 ("Definitions"), to mean "a carryout bag that is provided by a business to a customer for the purpose of transporting groceries, prepared food, or other retail goods..."
- B.** In SECTION 2 of the bill, amends the definition of "Plastic checkout bag" and "Plastic film bag" in ROH Section 9-9.1 ("Definitions"), to change the existing exclusions under subsections 2(A) and 2(B) for each respective term, to read as follows:
- "(2) This term does not include:
- (A) [~~Bags~~] Handle-less plastic bags used by customers inside a business to package loose items, such as bakery goods, fruits, vegetables, nuts, ground coffee, grains, candies, or small hardware items;
- (B) [~~Bags~~] Handle-less plastic bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness;"
- C.** In SECTION 4 of the bill, proposed ROH Section 41-27.1:
1. Amends the definition of "Business" to no longer exclude the term food vendor;
 2. Amends the term "Cater" to be "Catered Food" and defines it to mean "the provision of prepared food in bulk quantity amounts or multiple servings with the intent for later consumption, or the service of prepared food at a site or event venue.";
 3. Amends the definition of "Disposable" to mean "designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple re-use.";
 4. Removes the definition of "Grab-and-go";
 5. Amends the definition of "Plastic food ware" by: removing the phrase "...used for selling or providing prepared food for consumption on or off

the premises of a food vendor..."; replacing the phrase "such as" with "including, but not limited to"; and adding "non-plastic cups that contain a polyethylene or plastic coating" as an excluded plastic food ware product.

6. Amends the definition of "Polystyrene foam food ware" by removing the phrase: "...used for selling or providing prepared food for consumption on or off the premises of a food vendor...";
 7. Defines "Prepackaged food" to mean "prepared food that is sealed, contained, or wrapped in a manner to protect and prevent the prepared food from having any direct human contact, prior to being provided for sale by a food vendor to a customer, including, but not limited to, bentos, kimchi, seaweed salad, takuan, tofu, pre-made sandwiches, desserts, pies, noodles, salads, parfaits, and drinks.";
 8. Amends the definition of "Prepared food" to mean "food or beverages that are prepared for consumption on or off the premises of a food vendor, by cooking, chopping, peeling, slicing, mixing, brewing, freezing, squeezing, or otherwise processed at premises owned, leased, or otherwise controlled by the food vendor; but the term does not include raw meat, raw poultry, raw seafood, unprepared produce and uncooked eggs. Prepared food includes restaurant style food and beverages that are packaged after being ordered and ready to be consumed without further preparation."
 9. Defines "Produce" to mean "any fruit or vegetable including mixes of intact fruits and vegetables, and includes mushrooms, sprouts irrespective of seed source, peanuts, tree nuts, beans, honey, and herbs."
 10. Amends the definition of "Service ware" by replacing the phrase "such as" with "including, but not limited to";
 11. Amends the term "Shelf stable" to be "Shelf stable food" and defines it to mean "prepared food that can be safely stored at room temperature and does not require refrigeration, freezing, or heating for food safety purposes, prior to purchase by a customer."
- D.** In SECTION 4 of the bill, proposed ROH Sections 41-27.3(a) and (b), clarifies that exemptions may be granted for a specified term of up to two years and then subsequently renewed for specified terms of up to two years thereafter.
- E.** In SECTION 4 of the bill, proposed ROH Section 41-27.3(d), amends the categorical exemptions from compliance, to read as follows:
- "(1) Packaging for raw meat, raw poultry, raw seafood, unprepared produce and uncooked eggs;

- (2) Packaging for prepackaged food, shelf stable food, and catered food; and
- (3) Packaging in any situation deemed by the city to be an emergency requiring immediate action for the preservation of life, health, property, safety, or essential public services. This exemption shall be in place until the emergency has ceased or the mayor has determined that the exemption is no longer applicable to the situation."

F. In SECTION 4 of the bill, proposed ROH Section 41-27.4, amends the prohibition to read as follows:

"(a) No business within the City and County of Honolulu shall sell polystyrene foam food ware, disposable plastic service ware, or disposable plastic food ware, except for:

- (1) Packaging for raw meat, raw poultry, raw seafood, unprepared produce and uncooked eggs;
- (2) Packaging for prepackaged food and shelf stable food; and
- (3) Non-compliant products sold to a food vendor who has been granted an exemption for said products under Section 41-27.3.

(b) The department may grant an exemption from compliance with the prohibitions of this section upon application and the provision of sufficient evidence that there are no reasonable alternatives available to the business to comply, or compliance with the prohibition would cause significant hardship for the business.

For purposes of this subsection, exemptions may be granted for a specified term of up to two years, and may be subsequently renewed for specified terms of up to two years thereafter, provided that during the term of the exemption, diligent efforts are made by the business to become compliant."

G. In SECTION 4 of the bill, adds a severability clause as a new proposed ROH Section 41-27.8.

H. Amends the bill's general effective date to January 1, 2021; with the restrictions on polystyrene foam food packaging under proposed ROH Section 41-27.2(a) and plastic food packaging under proposed ROH Section 41-27.2(c), as well as the prohibition on the sale of polystyrene foam food ware, plastic service ware, and plastic food ware, effective January 1, 2022.

I. Makes miscellaneous technical and nonsubstantive amendments.



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RELATING TO PLASTIC.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose and Findings. The purpose of this ordinance is to address the provision of certain single-use plastic goods and plastic bags.

The impact of the world's increasing waste stream is unsustainable and detrimental to the future of Hawaii's economy and the health and safety of its people. Plastics entering the environment have a demonstrable adverse effect on the health of the people of Honolulu, as well as the environmental integrity of our islands. Single-use plastic service ware and packaging are major contributors to street and beach litter, ocean pollution, harm to marine and other wildlife, and greenhouse gas emissions, which directly contribute to the global climate crisis.

A significant portion of marine debris -- estimated to be 80 percent -- originates on land, primarily as escaped refuse and litter, much of it plastic, in urban runoff. These land-based plastics degrade into pieces and particles of all sizes, including microplastics, and are present in the world's oceans at all trophic levels. Among other hazards, plastic debris attract and concentrate ambient pollutants like heavy metals and persistent organic pollutants in seawater and freshwater, which can transfer to fish, and other seafood, that is eventually caught and sold for human consumption.

The City and County of Honolulu ("City") is a recognized leader in developing responsible waste management policies and programs. In order to protect health, life, and property and preserve the order and security of the City and its inhabitants, ordinances have been enacted to regulate the use of plastic and non-recyclable paper bags provided by businesses to customers. In continuing to strive for responsible waste management policies and programs, the City must address the provision of single-use plastic goods.

Reduction of the amount of non-degradable and non-recyclable waste that enters the waste stream is consistent with the City's proposed Integrated Solid Waste Management Plan, which aims to reduce per capita waste generation by 25 percent by 2030 and to reduce carbon emissions from the waste stream by substantially reducing or eliminating carbon-based single-use plastics and polystyrene by 2030. These measures are also consistent with the 2030 solid waste reduction goals set forth by the State-level *Aloha+ Challenge*, to which Honolulu is a signatory, which include to "support changes in design, material use, and manufacturing that reduce waste and toxicity" and to "significantly reduce the annual generation of solid waste."



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Through this measure, it is the Council's intent to protect human safety and welfare, and to improve environmental quality on the island, in the neighboring marine environment, and globally.

SECTION 2. Section 9-9.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended as follows:

1. By adding a new definition of "Plastic" to read as follows:

"Plastic" means any material made of fossil fuel-derived or petrochemical polymeric compounds and additives that can be shaped by flow."

2. By amending the definitions of "Plastic checkout bag" and "Plastic film bag" to read as follows:

"Plastic checkout bag":

- (1) Means a carryout bag that is provided by a business to a customer for the purpose of transporting groceries, prepared food, or other retail goods, and is made from plastic and not specifically designed and manufactured for ~~[multiple]~~ long-term re-use;
- (2) This term does not include:
 - (A) ~~[Bags]~~ Handle-less plastic bags used by customers inside a business to package loose items, such as bakery goods, fruits, vegetables, nuts, ground coffee, grains, candies, or small hardware items;
 - (B) ~~[Bags]~~ Handle-less plastic bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness;
 - (C) ~~[Bags used to protect or transport prepared foods, beverages, or bakery goods;~~
 - (D) ~~Bags provided by pharmacists to contain prescription medications;~~
 - (E) Newspaper bags for home newspaper delivery;



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~~[(F)]~~ Door-hanger bags;

~~[(G)]~~[(D)] Laundry, dry cleaning, or garment bags ~~[, including bags provided by hotels to guests to contain wet or dirty clothing];~~

~~[(H)]~~[(E)] Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

~~[(+)]~~[(F)] Bags used to contain live animals, such as fish or insects sold in pet stores; or

~~[(+)]~~[(G)] Bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals sold at the retail level; provided that this exemption shall be limited to one bag per customer."

"Plastic film bag":

- (1) Means a plastic bag made out of thin flexible sheets of plastic with a thickness of 10 mils or less;
- (2) This term does not include:
 - (A) ~~[Bags]~~ Handle-less plastic bags used by customers inside a business to package loose items, such as bakery goods, fruits, vegetables, nuts, ground coffee, grains, candies, or small hardware items;
 - (B) ~~[Bags]~~ Handle-less plastic bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness;
 - (C) ~~[Bags used to protect or transport prepared foods, beverages, or bakery goods;~~
 - ~~[(D)]~~ ~~Bags provided by pharmacists to contain prescription medications;~~
 - ~~[(E)]~~ Newspaper bags for home newspaper delivery;



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~~[(F)]~~ Door-hanger bags;

~~[(G)]~~(D) Laundry, dry cleaning, or garment bags ~~[-, including bags provided by hotels to guests to contain wet or dirty clothing];~~

~~[(H)]~~(E) Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

~~[(I)]~~(F) Bags used to contain live animals, such as fish or insects sold in pet stores; or

~~[(J)]~~(G) Bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals sold at the retail level; provided that this exemption shall be limited to one bag per customer."

SECTION 3. Article 27 of Chapter 41, Revised Ordinances of Honolulu 1990 ("Polystyrene Foam Containers"), is repealed.

SECTION 4. Chapter 41, Revised Ordinances of Honolulu 1990 ("Regulated Activities"), is amended by adding a new Article 27, to read as follows:

"Article 27. Polystyrene Foam and Disposable Food Service Ware

Sec. 41-27.1 Definitions.

"Business" means any commercial enterprise or establishment operating in the City and County of Honolulu, including an individual proprietorship, joint venture, partnership, corporation, limited liability company, or other legal entity, whether for profit or not for profit, and includes all employees of the business or any independent contractors associated with the business.

"Catered food" means the provision of prepared food in bulk quantity amounts or multiple servings with the intent for later consumption, or the service of prepared food at a site or event venue.

"Customer" means any person purchasing prepared food from a food vendor.

"Department" means the department of environmental services.

"Disposable" means designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple re-use.



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"Food vendor" means any entity or person selling or providing prepared food for consumption within the City and County of Honolulu, including any store, shop, sales outlet, pharmacy, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, food truck, catering vehicle or cart, roadside stand, or other establishment that sells or provides prepared food for consumption within the city.

"Plastic" means any material made of fossil fuel-derived or petrochemical polymeric compounds and additives that can be shaped by flow.

"Plastic food ware" means hot and cold beverage cups, cup lids, plates, bowls, bowl lids, "clamshells," trays, or other hinged or lidded containers that contain plastic. The term does not include disposable plastic condiment packets; food-related bags or wrappers, including, but not limited to, musubi wraps, plastic film, poi bags, chip bags, cracker and cookie wrappers, bread bags, meal kits, or ice bags; beverage-related bottles or cartons; non-plastic cups that contain a polyethylene or plastic coating; packaging for unprepared food; and packaging for wholesale distribution of prepared food, baked goods or dairy products.

"Polystyrene foam" means blown polystyrene and expanded and extruded foams which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expanded bead polystyrene) injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam does not include clear, solid or oriented polystyrene.

"Polystyrene foam food ware" means hot and cold beverage cups, cup lids, plates, bowls, bowl lids, "clamshells," trays, or other hinged or lidded containers, that are made of polystyrene foam; but the term does not include polystyrene foam coolers and ice chests specifically designed and manufactured for multiple re-use; and soup or noodles packaged with polystyrene foam that has been filled and sealed prior to receipt by the food vendor.

"Prepackaged food" means prepared food that is sealed, contained, or wrapped in a manner to protect and prevent the prepared food from having any direct human contact, prior to being provided for sale by a food vendor to a customer, including, but not limited to, bentos, kimchi, seaweed salad, takuan, tofu, pre-made sandwiches, desserts, pies, noodles, salads, parfaits, and drinks.



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"Prepared food" means food or beverages that are prepared for consumption on or off the premises of a food vendor, by cooking, chopping, peeling, slicing, mixing, brewing, freezing, squeezing, or otherwise processed at premises owned, leased, or otherwise controlled by the food vendor; but the term does not include raw meat, raw poultry, raw seafood, unprepared produce and uncooked eggs. Prepared food includes restaurant style food and beverages that are packaged after being ordered and ready to be consumed without further preparation.

"Produce" means any fruit or vegetable including mixes of intact fruits and vegetables and includes mushrooms, sprouts irrespective of seed source, peanuts, tree nuts, beans, honey, and herbs.

"Service ware" means any stirrers, straws, baran, and utensils including forks, spoons, sporks, and knives; but the term does not include items contained within or attached to packaging of food or beverages, including, but not limited to, disposable plastic straws pre-packaged and sold with beverage boxes, or disposable plastic utensils pre-packaged and sold with ice cream or salads.

"Shelf stable food" means prepared food that can be safely stored at room temperature and does not require refrigeration, freezing, or heating for food safety purposes, prior to purchase by a customer.

"Utensils" are implements intended to assist in the consumption of food or drink.

Sec. 41-27.2 Restriction on polystyrene foam food ware, disposable plastic service ware and disposable plastic food ware.

- (a) Unless exempted under Section 41-27.3, no food vendor shall sell, serve, or provide prepared food in any polystyrene foam food ware to customers.
- (b) Unless exempted under Section 41-27.3, no food vendor shall sell, serve, or provide disposable plastic service ware to customers.
- (c) Unless exempted under Section 41-27.3, no food vendor shall sell, serve, or provide prepared food in disposable plastic food ware to customers.
- (d) Unless exempted under Section 41-27.3, polystyrene foam food ware shall not be sold or provided, or offered for sale or use at any city facility, city-authorized concession, city-sponsored or city-permitted event, or city program.



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Sec. 41-27.3 Exemptions.

- (a) The department may grant an exemption from compliance with the restrictions of Section 41-27.2 upon application and the provision of sufficient evidence that there are no reasonable alternatives available to the food vendor to comply, or compliance with the restriction would cause significant hardship for the food vendor.

For purposes of this subsection, exemptions may be granted for a specified term of up to two years, and may be subsequently renewed for specified terms of up to two years thereafter, provided that during the term of the exemption, diligent efforts are made by the food vendor to become compliant.

- (1) In situations where there are no reasonable alternatives available, a food vendor may submit an application, preferably on a form provided by the director, and shall set forth with specificity:
 - (i) The food vendor's name and address, and a copy of the food vendor's most current business registration certificate;
 - (ii) A description of the polystyrene foam food ware, disposable plastic service ware, or disposable plastic food ware at issue;
 - (iii) The factual basis to support the requested determination that there is no reasonable alternative to the use of the non-compliant product at issue, which for example, may include packaging necessary for safely containing food that is of significantly high or low temperature, impact to Hazard Analysis and Critical Control Points plan applicable to the food vendor, or specific transportation requirements or safeguards; and
 - (iv) Copies of all exemptions issued to the applicant under this article.
- (2) In situations where compliance would cause significant hardship, a food vendor may submit an application, preferably on a form provided by the director, and shall set forth with specificity:



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- (i) The food vendor's name and address, and a copy of the food vendor's most current business registration certificate;
 - (ii) A description of the polystyrene foam food ware, disposable plastic service ware, or disposable plastic food ware at issue;
 - (iii) The factual basis to support the requested determination that the use of a compliant product at issue would cause the applicant significant hardship and that there is no affordable compliant alternative; and
 - (iv) Copies of all exemptions issued to the applicant under this article.
- (b) The department may grant an "industry exemption" from compliance with the restrictions of Section 41-27.2 upon application and the provision of sufficient evidence that compliance with Section 41-27.2 would cause hardship to the food service industry. "Hardship" under this subsection will be construed to include, but not be limited to: situations where there are no acceptable alternatives to providing polystyrene foam food ware, disposable plastic service ware, or disposable plastic food ware to customers; or situations where acceptable alternatives are not readily available due to market supply constraints.

For purposes of this subsection, an "industry exemption" may be granted for a specified term of up to two years, and may be subsequently renewed for specified terms of up to two years thereafter, provided that during the term of the exemption, diligent efforts are made by the industry applicant to become compliant.

- (c) Disposable plastic straws may be provided, upon request, to customers for whom non-fossil-fuel-based straws are unsuitable due to medical or physical conditions. Otherwise, straws must be fossil-fuel free or designed to be reusable. The following entities are exempt from compliance with the restriction of Section 41-27.2(b), specific to disposable plastic straws:
- (1) A "hospital" as defined under Hawaii Administrative Rules section 11-93-2;
 - (2) A "nursing facility" as defined under Hawaii Administrative Rules section 11-94.1-2;



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- (3) An "assisted living facility" as defined under Hawaii Administrative Rules section 11-90-2;
 - (4) An "adult residential care home" ("ARCH") and "expanded ARCH" as defined under Hawaii Administrative Rules section 11-100.1-2;
 - (5) A "hospice service agency" as defined under Hawaii Revised Statutes section 321-15.63(b);
 - (6) A "hospice home" as defined under Hawaii Revised Statutes section 321-15.1;
 - (7) A "home health agency" as defined under Hawaii Administrative Rules section 11-97-1; and
 - (8) A "home care agency" as defined under Hawaii Administrative Rules section 11-700-2.
- (d) The following shall be exempt from compliance with the restrictions of Section 41-27.2:
- (1) Packaging for raw meat, raw poultry, raw seafood, unprepared produce, and uncooked eggs;
 - (2) Packaging for prepackaged food, shelf stable food, and catered food; and
 - (3) Packaging in any situation deemed by the city to be an emergency requiring immediate action for the preservation of life, health, property, safety, or essential public services. This exemption shall be in place until the emergency has ceased or the mayor has determined that the exemption is no longer applicable to the situation.

Sec. 41-27.4 Ban on sale of polystyrene foam food ware, disposable plastic service ware, and disposable plastic food ware.

- (a) No business within the City and County of Honolulu shall sell polystyrene foam food ware, disposable plastic service ware, or disposable plastic food ware, except for:
- (1) Packaging for raw meat, raw poultry, raw seafood, unprepared produce and uncooked eggs;
 - (2) Packaging for prepackaged food and shelf stable food; and



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- (3) Non-compliant products sold to a food vendor who has been granted an exemption for said products under Section 41-27.3.
- (b) The department may grant an exemption from compliance with the prohibitions of this section upon application and the provision of sufficient evidence that there are no reasonable alternatives available to the business to comply, or compliance with the prohibition would cause significant hardship for the business.

For purposes of this subsection, exemptions may be granted for a specified term of up to two years, and may be subsequently renewed for specified terms of up to two years thereafter, provided that during the term of the exemption, diligent efforts are made by the business to become compliant.

Sec. 41-27.5 Disposable service ware upon request.

- (a) A food vendor may only provide or distribute disposable service ware for prepared food or for a beverage upon the request or affirmative response of a customer or person being provided the prepared food or beverage, or in a self-service area or dispenser.
- (b) The department shall engage in an education and outreach campaign in coordination with community and business partners to facilitate implementation of this section.

Sec. 41-27.6 Enforcement, civil penalties, and injunctive relief.

- (a) Enforcement and administration of this article is under the jurisdiction of the department of environmental services.
- (b) Any food vendor or business violating any provision of this article or any rule adopted pursuant to this article shall:
 - (1) Be ordered to discontinue the distribution or sale of items prohibited by this article; and
 - (2) If continuing the distribution despite the order, be subject to a civil fine of not less than \$100 nor more than \$1,000 for each day of violation.
- (c) The director of environmental services may institute a civil action in any court of competent jurisdiction for injunctive or other relief to correct or abate violations of



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this article or any rule adopted pursuant to this article, to collect administrative penalties, or to obtain other relief.

Sec. 41-27.7 Rules.

The director of environmental services shall adopt rules pursuant to HRS Chapter 91 regarding the implementation, administration, and enforcement of this article.

Sec. 41-27.8 Severability.

The provisions of this article, are hereby declared to be severable. In accordance therewith, if any portion of this article is held invalid for any reason, the validity of any other portion of this article shall not be affected and if the application of any portion of this article to any person, property, or circumstance is held invalid, the application hereof to any other person, property or circumstances shall not be affected."

SECTION 5. In SECTION 2 of this ordinance, material to be repealed is bracketed and stricken and new material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL **40 (2019), CD1, FD1**

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SECTION 6. This ordinance generally takes effect on January 1, 2021, provided that: Sections 41-27.2 (a), 41-27.2(c), and 41-27.4, Revised Ordinances of Honolulu, as enacted in SECTION 4, shall take effect on January 1, 2022.

INTRODUCED BY:

Joey Manahan

DATE OF INTRODUCTION:

July 9, 2019

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu